

PHILIP RUSSELL, L.L.C.

ATTORNEYS AT LAW

(203) 661-4200

PHILIP RUSSELL\*+  
JAMES PASTORE  
KAREN L. MAYER\*  
ROSS M. KAUFMAN\*\*

of counsel:  
HAROLD H. DEAN

\* MEMBER CONNECTICUT AND NEW YORK BAR  
\*\* MEMBER CONNECTICUT AND NEW JERSEY BAR  
+ BOARD CERTIFIED  
CRIMINAL TRIAL ADVOCACY  
NATIONAL BOARD OF TRIAL ADVOCACY

66 FIELD POINT ROAD  
P.O. BOX 1437  
GREENWICH, CT 06836

FAX  
(203) 661-3666

October 25, 2007

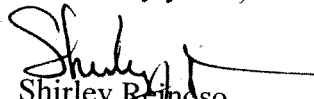
Robert A. Porzeinski, Esq.  
Asset Forfeiture Section  
600 Army Navy Drive  
Arlington, VA 22202

Re: Gustavo Bermudez v. City of New York Police Department  
Civil Docket No.: 07 CV 9537

Dear Attorney Porzeinski:

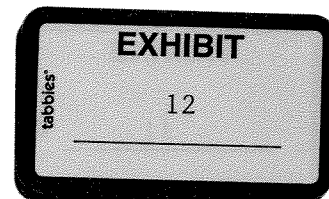
Enclosed please find a courtesy copy of the Summons in a Civil Action and Complaint that we filed with the United States District Court, Southern District of New York regarding the above referenced matter.

Very truly yours,

  
Shirley Reinoso  
Legal Assistant

SR/st  
Enclosure

02/06/08 11:38:23



AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

GUSTAVO BERMUDEZ

07 CIV. 9537

SUMMONS IN A CIVIL ACTION

V.

CITY OF NEW YORK POLICE DEPARTMENT AND  
THE UNITED STATES DRUG ENFORCEMENT ADMINISTRATION

CASE NUMBER:

JUDGE BAER

TO: (Name and address of Defendant)

City of New York Police Department  
1 Police Plaza  
New York, NY 10038

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Karen L. Mayer, Esq.  
Philip Russell, LLC  
66 Field Point Road  
Greenwich, CT 06830

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. Michael McMahon  
CLERK

CLERK

DATE

OCT 25 2007

(By) DEPUTY CLERK

OCT 29 PM 3:23

AO 440 (Rev. 8/01) Summons in a Civil Action

**RETURN OF SERVICE**Service of the Summons and complaint was made by me<sup>(1)</sup>

DATE

NAME OF SERVER (*PRINT*)

TITLE

*Check one box below to indicate appropriate method of service*

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

**STATEMENT OF SERVICE FEES**

TRAVEL

SERVICES

TOTAL \$0.00

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
Date\_\_\_\_\_  
*Signature of Server*\_\_\_\_\_  
*Address of Server*

2007 OCT 29 PM 3:23

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

GUSTAVO BERMUDEZ

V.

SUMMONS IN A CIVIL ACTION

CITY OF NEW YORK POLICE DEPARTMENT AND  
THE UNITED STATES DRUG ENFORCEMENT ADMINISTRATION

CASE NUMBER:

07 CIV. 9537

TO: (Name and address of Defendant)

The United States Drug Enforcement Administration  
99 10th Avenue  
New York, NY 10011

JUDGE BAER

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Karen L. Mayer, Esq.  
Philip Russell, LLC  
66 Field Point Road  
Greenwich, CT 06830

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

*[Signature]*

DATE

OCT 25 2007

(By) DEPUTY CLERK

AO 440 (Rev. 8/01) Summons in a Civil Action

**RETURN OF SERVICE**Service of the Summons and complaint was made by me<sup>(1)</sup>

DATE

NAME OF SERVER (PRINT)

TITLE

*Check one box below to indicate appropriate method of service*

- ☐ Served personally upon the defendant. Place where served:
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  
Name of person with whom the summons and complaint were left:
- ☐ Returned unexecuted:
- ☐ Other (specify):

**STATEMENT OF SERVICE FEES**

TRAVEL

SERVICES

TOTAL \$0.00

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

Date

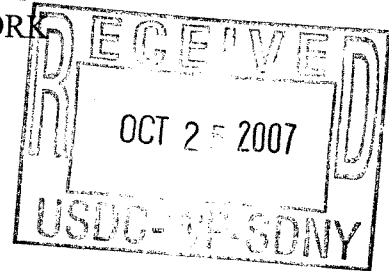
Signature of Server

Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

1007 OCT 29 PM 3:24

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



X-----X

GUSTAVO BERMUDEZ,

PLAINTIFF,

CASE NO.

VS.

07 CIV. 9537

CITY OF NEW YORK POLICE  
DEPARTMENT AND THE UNITED  
STATES DRUG ENFORCEMENT  
ADMINISTRATION,

JUDGE BAER

DEFENDANTS.

OCTOBER 24, 2007

X-----X

COMPLAINT

Plaintiff, GUSTAVO BERMUDEZ, by his attorney, Karen L. Mayer, complaining of the defendant, alleges:

1. This is an action for the recovery of seized personal property and money damages against the Defendants. Jurisdiction is predicated upon 28 U.S.C. §§ 1331, 1332, and 1367 and 42 U.S.C. §§ 1983 and 1988 and upon the pendent jurisdiction of this Court to entertain claims arising under state law.
2. Venue is proper in this district because it is where the original action arose when the City of New York Police Department (hereinafter "NYPD") seized property from the Plaintiff and where the division of the United States Drug Enforcement Administration (hereinafter "DEA"), who received the Plaintiff's property, is located and does business.

42-5114 631201006  
FBI-SDNY

3. It is alleged that the NYPD and DEA unreasonably seized and forfeited the Plaintiff's property, thereby depriving him of his right to the property with due process of law or just compensation.

4. At the time of the commencement of the above entitled action, and at all times hereinafter mentioned, Plaintiff was and still is the owner and entitled to the immediate possession of certain United States Currency, to wit:

- a) The Plaintiff shows actual standing, whereby under 21 U.S.C. § 881(a)(6), "no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner". The Plaintiff, being the owner of the currency, was in actual possession of the currency at the time of the seizure, had actual control and a financial stake in the currency.
- b) The Plaintiff has an interest in the property and will be able to show that the money, which according to the DEA has already been administratively forfeited, belonged to him due to a business venture and therefore sufficient to establish standing. *United States v. \$47,875 in United States Currency*, 746 F.2d 291 at 293 (5<sup>th</sup> Cir. 1984).
- c) The Plaintiff has ownership of the property, never denied that the currency was his, and was in dominion and control of the currency during the seizure.

5. The value of the aforesaid chattel is ONE HUNDRED TWENTY-THREE THOUSAND FIVE HUNDRED SIXTY-FIVE AND 00/100 DOLLARS (\$123,565.00) in United States Currency.

6. Upon information and belief, the Defendant DEA is in the possession of the aforesaid chattel and continues to wrongfully retain it.

7. The retention of the chattel by the Defendant is wrongful and the reversal of said purported forfeiture should be granted whereby:

- a) On July 18, 2006, the Plaintiff, Gustavo Bermudez, was in possession of \$123,565.00 in United States Currency, which he had received from his work in the Dominican Republic.
- b) The Plaintiff is the owner of said United States Currency. Until the incident on July 18, 2006, he had never been questioned about this money.
- c) On July 18, 2006, the Plaintiff was passing through the Bronx, New York, at which time the Plaintiff was confronted by NYPD Sergeant Crowley, who at all times mentioned herein was acting under color of law. Sergeant Crowley searched the Plaintiff's person without reason or cause.
- d) Sergeant Crowley, without justification or cause, seized the sum \$123,565.00 of United States Currency from the Plaintiff. The NYPD issued a Property Clerk's Invoice at the time the currency was confiscated which detailed the quantity of each type of United States Currency, totaling \$123,565.00. The Property Clerk's Invoice is attached heretofore as Exhibit A.
- e) The Plaintiff was not arrested and no charges were ever filed against the Plaintiff subsequent to the confiscation of said \$123,565.00 in United States Currency by the NYPD.
- f) Said \$123,565.00, which was seized by agents of the NYPD, was, upon information and belief, then secretly furnished to the DEA.

2007 OCT 29 PM 3:24



- g) Following the complaint and demand of the Plaintiff, the NYPD instituted a case number, NYCPD-IAB; 06DEA971937, which was assigned on March 9, 2007 to Captain Miller.
- h) Upon information and belief, a receipt for the confiscated currency was issued by the NYPD, on behalf of the DEA, in the amount of ONE HUNDRED TWENTY-TWO THOUSAND NINE HUNDRED EIGHTY-FIVE AND 00/100 DOLLARS (\$122,985.00). This represents a FIVE HUNDRED EIGHTY AND 00/100 DOLLARS (\$580.00) discrepancy from the original New York Police Department Property Clerk's Invoice. Furthermore, the receipt was not an official voucher, but rather a "whited out" New York Police Department Voucher. A copy of the unofficial voucher issued by the DEA is attached heretofore as Exhibit B.
- i) Upon information and belief, the currency was issued a Yellow Tag, numbered 0003617, and a blue moneybag under file number C1-06-0121 for the Overnight Vault.
- j) Upon information and belief, the tagged money subsequently was brought to an Asset Forfeiture Account in White Plains, NY and deposited into account number 3752197200.
- k) The Plaintiff never received any official notice of forfeiture from the DEA nor was he given the opportunity to be heard or recover the currency. Instead, the Plaintiff continued to demand redress from the NYPD, whose name the defendants prominently displayed on all paperwork furnished to the Plaintiff.
- l) It was only on March 9, 2007 that the Plaintiff learned that the funds were transferred to the DEA, at which point, Plaintiff, through his counsel, did the

2007 OCT 23 PM 3:24

following:

- i. Placed several telephone calls to the agents of the DEA, believed to be assigned to the matter, in an effort to obtain the required information necessary to make a formal demand for the return of the seized funds;
- ii. On April 16, 2007, a written inquiry was made requesting information on whether administrative forfeiture proceedings had been commenced. The DEA neither furnished any of the requested nor responded to said request.
- iii. On May 3, 2007, written demand was made for the return of the seized funds from the DEA. Said request was denied on May 22, 2007.

8. This action should not be time barred, due to the lack of response from both the NYPD and the DEA regarding the forfeited currency, to wit:

- a) Prior to the commencement of this action, and on or about October 25, 2006, plaintiff duly demanded the possession of the aforesaid chattel from the defendant NYPD.
- b) The DEA continually ignored the requests made by the Plaintiff to recover the forfeited currency.
- c) All attempts made by the Plaintiff to recover the forfeited currency were to avail as a result of the DEA's deliberate and continual refusal to supply any information with regard to the seizure and/or forfeiture.
- d) In addition, any attempts made by the Plaintiff to recover the forfeited currency were to no avail due to the lack of proper voucher and invoice tickets for the property.
- e) The Plaintiff never received notice of the forfeiture action from the DEA, nor was

any other action taken by the DEA to notify the Plaintiff. *U.S. v Various Parcels of Real Property*, 650 F.Supp. 62, 64 n.2 (N.D. Ind. 1986) See *United States v. \$38,000.00 in United States Currency*, 816 F.2d 1538, 1545 (11th Cir.1987).

- f) Any publication of the forfeiture in the Wall Street Journal was inaccurate due to the difference in currency amounts on the improper voucher furnished to the Plaintiff, and therefore was unidentifiable and lacked actual notice.
- g) The courts have continually excused the late filing or extended time of a forfeiture action if an attempt was made in good faith to file a claim. *United States v. Articles of Hazardous Substances*, 444 F.Supp. 1260 at 1263 (M.D.N.C.), modified, 588 F.2d 39 (4<sup>th</sup> Cir. 1978); or relied detrimentally on misinformation provided by a federal agency, *United States v. One 1979 Oldsmobile-Cutlass Supreme*, 589 F. Supp. 477 at 478 (N.D.Ga. 1984).
- h) It is in the court's discretion to allow an extension to file a claim in a case of good faith attempts and misinformation.

9. Since the seizure of the funds, no criminal actions have been commenced against the Defendant to date, thereby creating no reason for the continued possession of the Plaintiff's currency.

10. Due to the lack of criminal activity and liability that was found, the seized funds should be returned to the plaintiff, who at all times lawfully possessed these funds.

**WHEREFORE**, plaintiff demands judgment against the defendants and an order adjudging that the plaintiff is the owner of the seized funds and is entitled to their immediate possession, and that the currency be delivered to the plaintiff, and if possession thereof cannot be given to the plaintiff, that the plaintiff have judgment against the defendant awarding:

- i. ONE HUNDRED TWENTY-THREE THOUSAND FIVE HUNDRED SIXTY-FIVE AND 00/100 DOLLARS (\$123,565.00) with interest thereon from October 25, 2006;
- ii. Compensatory damages;
- iii. Punitive damages pursuant to 42 U.S.C. §1988;
- iv. Costs and Attorney's Fees pursuant to 28 U.S.C. §2465(b)(1)(A), 28 U.S.C. 2412(d) and/or 42 U.S.C. §1988;
- v. Interest;
- vi. Costs;
- vii. Injunctive relief; and
- viii. Such other, further and different relief as this court may deem proper and just.

THE PLAINTIFF  
GUSTAVO BERMUDEZ

By Karen L. Mayer  
Karen L. Mayer, Esq.  
Philip Russell, LLC  
66 Field Point Road  
Greenwich, CT 06830  
(203) 661-4200  
Federal Juris No. KM6555

1007 OCT 29 PM 3:24

2007 OCT 29 PM 3:25



7001 OCT 29 PM 3:25

04/12/2007 13:57 2033350607

LAW OFFICES

PHILIP RUSSEL

G

PAGE 04/0

PAGE 03/1

MAR-09-2007 11:49

100 FIELD SERVICES

718 492 6658 P.02

Cl-06-021

N-1

PO0008154P 45409000714.375 2.49 P.000P

Agent Signature: [Signature]  
Date of Depart: 2/2/07  
Agent Signature: [Signature]

Team: [Signature]

C. C. G. 0111

DEPOSIT SLIP  
CURRENCY  
1000 Dollar Bills  
500 Dollar Bills  
100 Dollar Bills  
50 Dollar Bills  
20 Dollar Bills  
10 Dollar Bills  
5 Dollar Bills  
1 Dollar Bills  
514 5140  
157 7850  
3677 61540  
182 1820  
45 45  
TOTAL DEPOSIT: 122,985

122,985